IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION No.25674 OF 2005

Between:

M.G.Prasad, S/o.M.Sriramulu,

Aged about 47 years, Occu:

Head Constable Prohibition & Excise,

O/o.Assistant Commissioner of Distilleriers,

Hydeerabad, and others.

..... PETITIONERS

AND

The Deputy Commissioner of Prohibition & Excise,

Hyderabad Division, Hyderabad, and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT PETITION No.25674 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

Aggrieved by an order dated 18.08.2005 made in O.A.No.2048 of 2005 on the file of A.P. Administrative Tribunal, the present writ petition is filed by six petitioners, who are not parties to the above-mentioned O.A. with the leave of the Court granted on 29.11.2005

The issue involves the rights of the petitioners herein as well as Respondent Nos.6 to 14 for promotion to the post of Excise Sub- Inspectors. All the six petitioners are working as Head Constables in the Excise Department, whereas the Respondent Nos.6 to 14 were working as Junior Assistants in the same department. Their service conditions are governed by the Andhra Pradesh Prohibition and Excise Subordinate Service Rules (for short 'the Rules') by which the service consisting of five categories of posts was constituted, the second of which is Prohibition and Excise Sub-Inspectors. Under Rule-3 of the Rules, the post of the Sub-Inspector is required to be filled up either by direct recruitment or by promotion from the category of Excise Head Constables, which is the third category, or by appointment by transfer of Junior Assistants etc. working in the Excise Department. It is further stipulated that 50% of the posts of Excise Sub-Inspectors are to be filled by direct recruitment and the remaining 50% are to be filled by promotion from the category of Head Constables and by appointment by transfer of Junior Assistants etc in the ratio of 1 : 1. The Rule also specifies the slot, which is required to be filled up either by direct recruitment or otherwise indicated above with a specific reference to a cycle of twenty (20) vacancies.

Complaining that in the guise of making in-charge arrangements, Junior Assistants have been temporarily promoted in excess of their quota, some of the Excise Head Constables approached the A.P. Administrative Tribunal initially by way of filing O.A.No.10817 of 2003. Another O.A. being O.A.No.126 of 2003 with an identical complaint, of course, by the Junior Assistants came to be filed challenging the proceedings issued by the Commissioner of Prohibition & Excise, dated 21.12.2002, wherein the Commissioner recorded that as per his records, as against 197 vacancies of Prohibition & Excise Sub-Inspectors, 144 Junior Assistants and 53 prohibition & Excise Head Constables have been promoted, and therefore, as per the ratio in promotions including the ad hoc promotions, 19 Prohibition & Excise Head Constables have to be promoted and for the remaining vacancies, the Junior Assistants and Prohibition & Excise Head Constables will be eligible for promotion in the ratio of 1 : 1.

However, the Government by memo dated 03.02.2003 recorded as follows:

> "2. He is also informed that, the vacancies earmarked for different sources to a post as per provisions of Special Rules, have to be filled up in a panel year strictly as per rota and quota system provided therein. There is no question of forwarding vacancies not filled by a particular category (source) to the next or subsequent panel years. Therefore, finding (19) vacancies for P & E Head Constables as short fall in their quota and contemplating to fill them up by a particular source is an error. The vacancies in the panel year have to be filled up as per provisions of Special Rules only and not by calculating backlog vacancies.
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> 3. It has been represented to the Government through their third cited that, Dy.Commissioner of Proh. & Excise, Hyderabad have decided to fill up (19) vacancies of Prohibition & Excise Sub-Inspectors by Prohibition & Excise Head Constables duly taking these vacancies as backlog and requested to issue instructions for stopping their promotions. In view of the rule position as stated above, any action contrary to the statutory provisions would be bad in law.
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> 4. The Commissioner of Prohibition & Excise is, therefore, requested to take action in the matter accordingly and file counter on behalf of Government in the above C.a. and send compliance on or before 10.02.2003 positively."

The Tribunal by its order set aside the above memo dated 03.02.2003 and upheld the proceedings of the Commissioner of Prohibition & Excise, dated 21.12.2002, referred to above, and ordered as follows:

> "1. Set aside the Government Memo dt.3.2.2003, observing that Memo will result in injustice done to the Excise Head Constables not being addressed and also results in violation of the Quota Rule in earlier years and upheld the Proceedings dt.21.12.2002 issued by the Commissioner of Proh. & Excise in directing to fill up 19 posts of Excise Sub-Inspectors from the cadre of Excise Head Constables on the ground that Junior Assistants have excessively got promotions, whereas the Excise Head Constables are in shortfall in getting promotion as Excise Sub-Inspector."

Aggrieved by the said decision of the Tribunal, the Junior Assistants of the Excise Department, who are applicants in O.A.No.126 of 2006 approached this Court earlier by way of filing W.P.No.19701 of 2003, which was disposed of by this Court by an order dated 14.02.2005 with the following directions:

"7. Under those circumstances, in order to put a quietus to the litigation and also to set right the injustice which was caused to the inservice Excise Head Constables, we dispose of the Writ Petition with the following directions:

1. Out of 42 promotions given in pursuance of 1998 Rules, 23 candidates shall be promoted in accordance with 1 : 1 ratio and they shall have their respective seniority, but the balance 19 candidates who were promoted on account of non-filling up of the posts which were ear-marked for Excise Head Constables, they shall take their seniority from serial No.24 onwards.

2. The effect of this direction is that 19 candidates who got promotion will rank juniors to 23 candidates, who were appointed in accordance with 1998 Rules.

3. In this regard the learned counsel for the respondents also have expressed that they have no grievance if such an arrangement is made.

4. The order passed by the Tribunal shall not be treated as a precedent in subsequent matters in view of the peculiar facts and circumstances of the case.

8. With the directions indicated above, the Writ Petition is disposed of. No costs."

Pursuant to the above order, 19 Junior Assistants of the Excise Department who are promoted on incharge basis as Excise Sub-Inspectors were sought to be sent back as Junior Assistants in compliance with the decision of this Court in the above-mentioned writ petition by various orders of the Deputy Commissioner of Prohibition and Excise dated 12.04.2005. Aggrieved by the same, 15 of the 19 Junior Assistants, whose incharge promotions were reversed, approached the A.P. Administrative Tribunal by way of different O.As, the details of which may not be necessary for the present purpose, and they also sought interim orders from the Tribunal protecting their status, but the Tribunal was not inclined to grant any interim orders. Aggrieved by the decision of the Tribunal in not granting interim orders, five of the applicants, referred to earlier, approached this Court by way of W.P.Nos.8743 of 2005 and batch. The said batch of writ petitions came to be disposed of by an order dated 21.04.2005. The operative portion of the order reads as follows:

"8. Under those circumstances, we dispose of these Writ Petitions and the Contempt Case with the following directions:

1. That the Petitioners covered by C.C.No.344/2005 shall be promoted as Incharge Excise Sub-Inspector by reducing the strength of the In-charge arrangements given to Junior Assistants to the extent and the remaining Junior Assistants will continue as In-charge Excise Sub-Inspectors.

2. It is made clear that the ratio of 50 : 50 has to be maintained when the Excise Sub-Inspector vacancies are sought to be filled by in-charge arrangements.

3. Even by taking four Head Constables into consideration, there will be still four more vacancies, which are required to go to Head Constables on in-charge basis. Therefore as and when they acquire qualifications, Head Constables also should be given in-charge arrangements.

4. The four Head Constables covered by C.C.No.344 of 2005 shall be granted in-charge arrangements forthwith."

After the High Court disposed of the above-mentioned batch of writ petitions, nine Junior Assistants out of the remaining fourteen reverted pursuant to the decision of this Court dated 04.02.2005, approached the A.P. Administrative Tribunal by way of O.A.No.2048 of 2005 praying, in substance, that the applicants be continued as in-charge Prohibition & Excise Sub-Inspectors. In the said O.A. initially an interim order came to be passed on 04.05.2005, which is as follows:

"Pending further consideration of this O.A. the Respondents are directed to follow Judgment rendered by the Hon'ble high Court in W.P.No.8743/2005 and batch dated 21.4.2005 in respect of the Applicants in this O.A. also.

This order is valid initially for a period of 14 days."

Strangely, when the matter is taken up for final hearing, by an order dated 18th August, 2005, which is the order challenged in the present writ petition, the Tribunal disposed of the O.A.No.2048 of 2005 on the basis of a representation made by the learned counsel for the applicants as well as the learned Government Pleader, holding that no further orders are necessary in the O.A. and the O.A. was closed. However, while passing the said order, the Tribunal further added that "…continuance of Applicants on in-charge basis would be subject to outcome of review petition said to be filed by the Respondents". Without considering the question whether the interim order was really justified in the circumstances or not, the Tribunal directed the applicants to continue and enjoy the benefit of the interim order. In other words, the applicants should continue as Excise Sub-Inspectors on in-charge basis until a review application is filed in this Court in W.P.No.8743 of 2005 and batch. In substance, not withstanding the final decision of this Court, the Tribunal passed an order which enables the applicants before the Tribunal, who are Respondent Nos.6 to 14 herein, to continue as Excise Sub-Inspectors on in-charge basis indefinitely.

From the order of the Tribunal, it appears that the Tribunal was misled to pass such an order. We regret to record that this practice of disposing of applications in terms of the interim orders without actually deciding the issues involved in the matter is not a healthy one and would only lead to further litigation. It is settled principle of law that the interim orders are only ad hoc directions of the Court pending the resolution of the main dispute between the parties. If the parties do not seek resolution of the main dispute before a judicial body, the parties have no justification to seek an interim order. In a given set of facts, such as the one before us, the parties having obtained an interim order, did not press for an adjudication of the main case on its merits. The interim order granted in such cases, is normally required to be dissolved unless there are special reasons to proceed otherwise and such reasons are required to be recorded.

The order under challenge before us, in our view, is a consequence of the abuse of process of law for the reasons mentioned above and the same is therefore set aside. The writ petition is allowed with costs and in the circumstances quantified at Rs.5,000/-.

JUSTICE J.CHELAMESWAR

JUSTICE M.VENKATESWARA REDDY

22nd MARCH, 2006

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

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